

## **EXHIBIT C**

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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:  
UNITED STATES OF AMERICA

06-CR-550

-against-

:  
United States Courthouse  
Central Islip, New York

DAVID BROOKS,

Defendant.

:  
July 18, 2013  
4:40 p.m.

- - - - - X

TRANSCRIPT OF TELEPHONE CONFERENCE  
BEFORE THE HONORABLE JOANNA SEYBERT  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government:

LORETTA E. LYNCH  
United States Attorney  
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Central Islip, New York 11722  
BY: MARSHALL MILLER  
Assistant United States Attorney

For the Defendant:

BY: RICHARD GREENBERG, ESQ.  
TAI PARK, ESQ.  
STEVEN YUROWITZ, ESQ.

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Proceedings recorded by mechanical stenography.  
Transcript produced by computer.

Perry Auerbach, CSR, RPR  
Official Court Reporter

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1 THE COURT: This is Judge Seybert.

2 THE CLERK: Also appearing for the defendant.

3 MR. PARK: Yes, Tai Park from Park and Jensen.

4 Good afternoon, your Honor.

5 THE COURT: Good afternoon to you both.

6 MR. GREENBERG: And with me from my office is  
7 Peter Yurowitz, who's one of my partners, he's been  
8 actively involved in the defense of Mr. Brooks in most of  
9 the matters.

10 MR. YUROWITZ: Good afternoon, your Honor.

11 THE COURT: Good afternoon. What I suggest is  
12 that Mr. Greenberg, either you speak or Mr. Yurowitz can  
13 speak on this issue in addition to Mr. Park, and you  
14 should of course state your name when you begin to speak.  
15 For the government, please.

16 MR. MILLER: Yes. Marshall Miller for the  
17 government.

18 THE COURT: All right. Gentlemen, I got you all  
19 on the line today for purposes of discussing this recent  
20 correspondence and the filing of the government of their  
21 letter on ECF, public filing, and the response from you,  
22 Mr. Greenberg, which was also filed shortly thereafter.

23 I want to disclose to you that I called  
24 Mr. Miller this afternoon when I received the  
25 correspondence and asked him to make inquiry of two items:

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1 One, why wasn't I contacted respecting the notice that was  
2 going to be made. I had been contacted regarding the  
3 investigation by way of the marshal service.

4 Additionally, I wanted to know -- and most  
5 importantly -- why the document was publicly filed and if  
6 it was going to be publicly filed, why there was no  
7 mention that the government's investigation did not  
8 disclose that these threats were substantiated. If not,  
9 that the threats were found to be unfounded or could not  
10 be substantiated, words to that effect.

11 Mr. Miller, you indicated that you would get  
12 back to me. I would like to get something done on this,  
13 because I don't necessarily think that it should remain on  
14 the public docket and first I would ask defense counsel,  
15 are you willing to waive your client's appearance for  
16 purposes of this proceeding?

17 MR. GREENBERG: Absolutely, your Honor. We are  
18 willing to waive, we do waive Mr. Brooks and we with do  
19 waive Mr. Brooks' appearance.

20 THE COURT: And so do you, Mr. Park?

21 MR. YUROWITZ: Yes, your Honor.

22 THE COURT: All right.

23 Now, Mr. Miller, if you would be good enough to  
24 tell me what, if anything, you're going to do with regard  
25 to this public filing?

1 MR. MILLER: Yes, your Honor. We're going to  
2 augment the public filing with an additional filing if the  
3 Court deems that to be appropriate. It would make clearer  
4 that to date we have not been able to corroborate or  
5 substantiate the allegations in a way that would enable us  
6 to credit it.

7 THE COURT: All right. And additionally, let me  
8 ask you, is it your general procedure to file these types  
9 of letters on a public docket?

10 MR. MILLER: Well, your Honor, we have been  
11 working at the suggestion really of the Court to be sure  
12 that our practice -- and I don't mean by the Court,  
13 your Honor, I mean the Court more generally, and  
14 particularly the Chief Judge to ensure that our practice  
15 in requesting that these matters be maintained under seal,  
16 that we do so in accordance with Second Circuit law  
17 regarding whether a compelling interest overrides the  
18 public's First Amendment, the media's First Amendment,  
19 qualified First Amendment right of access to request  
20 documents, and it was the assessment of the AUSAs who had  
21 been working, separate AUSAs who had been working on this  
22 threat allegation that there was a basis under the Second  
23 Circuit case law to file it under seal.

24 So that's why it was filed publicly.

25 THE COURT: Perhaps the better procedure would

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1 be to alert the Court and defense counsel of this  
2 potential filing rather than have letters going back and  
3 forth.

4 Let me ask Mr. Greenberg and Mr. Park, what, if  
5 anything, do you have to say with respect to this issue?

6 MR. GREENBERG: Well, your Honor this is Richard  
7 Greenberg, I appreciate Mr. Miller's letter --

8 THE COURT: You have to speak up a little bit  
9 louder.

10 MR. GREENBERG: I appreciate the government's  
11 desire to help remedy this situation. I did try to find  
12 out my best to --

13 THE COURT: You're not speaking loudly enough,  
14 sir.

15 MR. GREENBERG: I'll speak louder, I'm not on a  
16 speaker I'm on -- I'll speak more loudly. Anyway, I think  
17 what Mr. Sinclair is suggesting was what I suggested to  
18 Mr. Sinclair, something that supplements or corrects the  
19 filing, because I anticipate headlines about Brooks'  
20 attempting to kill the judge, that's why I got the letter  
21 in as quickly as I could and I'm glad that you received it  
22 already. I think that something along the lines it's not  
23 only appropriate but required that, something that says  
24 that they have no credible evidence to support this  
25 allegation.

1           Now, I know government never wants to say it's  
2 over, they want to always hold out the possibility there's  
3 something more, and I understand that, but for now  
4 Mr. Sinclair made it clear to me and to Mr. Park and  
5 Mr. Shargel yesterday that they have no basis to believe  
6 the allegations as of now, and that all I was hoping to  
7 convince Mr. Sinclair to say, but he refused because he  
8 felt the letter that they did file was clear enough.

9           But I didn't think it was, and I hope the  
10 government now agrees that something else must be said to  
11 clarify the situation, because certainly I want the Court  
12 to know, I want the government to know, I certainly want  
13 these lawyers who are threatened, apparently nobody  
14 thought I was one of them, I'm happy to hear that, but I  
15 want everybody to know there was no basis, no credible  
16 basis for this allegation and the government has  
17 determined that so far.

18           So that's really all I had to say. I don't know  
19 if Mr. Park has something else.

20           MR. PARK: Your Honor, the only, and this is  
21 really addressed to Mr. Miller as well, the one thing that  
22 I do believe Mr. Sinclair said during our conversation  
23 today which was helpful, that was the words that he used  
24 was that they had determined that the source of the  
25 allegation would not be credited.

1           Now, that is a different way of saying they have  
2 found no credible evidence, but in some ways I would ask  
3 that that augment, when there is an augmentation that that  
4 additional information be included because it does go to  
5 the fact that ultimately whoever made these allegations,  
6 ultimately the government concluded should not be  
7 credited, and I think that's even a slightly stronger way  
8 of saying that there is no current credible evidence  
9 supporting the allegation, and I would ask for that  
10 augmentation as well.

11           THE COURT: Mr. Miller, is that possible?

12           MR. MILLER: I'm certainly happy to work with  
13 counsel to craft some language that both accurately  
14 conveys the government's position and tries to address the  
15 concerns that I am hearing and that I understand, and I  
16 want to make sure that I do so in a way that accurately  
17 attaches the record, but perhaps we can work together when  
18 in phone call is done to come up with language that will  
19 accurately convey the government's position and do so in a  
20 way that takes care of the problems and concerns. We can  
21 get there I'm confident.

22           THE COURT: Certainly in the future I would  
23 expect that I would get some preliminary notice on matters  
24 such as this.

25           MR. GREENBERG: Your Honor, on that part, if I



1 pay just respond on the very point you just made.

2 The letter was addressed not to the Court but to  
3 counsel, Mr. Park and me. I cannot believe that the Chief  
4 Judge of the Eastern District or anybody else in the court  
5 system requires communication between counsel to be made a  
6 matter of public record.

7 And certainly your Honor's suggestion that there  
8 be a heads-up for the Court and whoever else is relevant  
9 before something is publicly filed is a wise one, it's a  
10 good idea.

11 I mean, this is going to have repercussions in  
12 the press I would predict. I was hoping my letter would  
13 resolve it, but I fear the worst. And it's a seemingly --  
14 I'm sure --

15 THE COURT: Mr. Greenberg, I'm sorry, sir, but  
16 we have a court reporter here and you are on a  
17 speakerphone for purposes of the record. So if you would  
18 be good enough just to repeat your last sentence.

19 MR. GREENBERG: My last sentence was simply I  
20 feel your Honor's point is well-taken, there should be  
21 notice in the future, this is the second time, I'm not  
22 blaming the government or accusing the government. These  
23 are understandable kinds of inadvertent mistakes, but this  
24 is the second time that something was prematurely publicly  
25 filed and had to either be removed from the public filing

1 or corrected, and I hope that in a high profile case like  
2 this the government will use particularly sensitive  
3 judgment about what needs to be filed. I'm sure that they  
4 will try.

5 MR. MILLER: Yes, your Honor, we do try.

6 It is our position that this issue is one where  
7 whatever the style of notice, we felt that it was  
8 important that there be a clear record in the court file  
9 that notice was given at appropriate time, we think that's  
10 important for all the parties that such notice be given in  
11 a manner that is recorded, because it's important for the  
12 record and given that we felt that it had to be recorded  
13 in the case file, we looked into case law on sealing and  
14 we didn't feel that the information -- that there was a  
15 basis under the Second Circuit case law to seal it.

16 So that is the government's position, and I  
17 understand your Honor's point, without preliminary notice,  
18 we will never file that preliminary notice in the future  
19 so that the Court can manage that process.

20 THE COURT: Thank you. All right.

21 Mr. Greenberg and Mr. Park, should I be expecting any  
22 motion to recuse the Court?

23 MR. GREENBERG: I certainly don't believe so,  
24 your Honor, now the government has clarified it, I don't  
25 see why the Court should be affected by a baseless

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1 allegation.

2 THE COURT: And the Court has not been affected  
3 by the allegations that were made. So I put that on the  
4 record, and unless I hear to the contrary, I will continue  
5 preparation on this case for sentence August the seventh.

6 MR. GREENBERG: As we are, your Honor,  
7 preparing, the person that I was concerned about is  
8 Mr. Shargel, whether he would have felt some reason to,  
9 but I think, I hope, he's not in touch today actually, but  
10 I do hope that now the government is willing to  
11 acknowledge that the allegations so far has proven  
12 unsupportable, that he will feel no reason to have the  
13 court withdraw. All right.

14 THE COURT: Mr. Greenberg and Mr. Park, please  
15 let me know as soon as you know after speaking to  
16 Mr. Brooks and Mr. Shargel, whether any motion will be  
17 forthcoming so that I can appropriately respond to it.  
18 Other than that, I will see you folks on August 7th.

19 MR. GREENBERG: Yes, your Honor.

20 THE COURT: Have a good day.

21 MR. MILLER: Mr. Park, Mr. Greenberg, if one of  
22 you can call me in about five minutes I'm sure I can draft  
23 up the language.

24 THE COURT: Okay.

25 (Matter concluded.)